

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
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Rural Call Completion)
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WC Docket No. 13-39

**COMMENTS OF
ASSOCIATED NETWORK PARTNERS, INC.
AND ZONE TELECOM, INC.**

Associated Network Partners, Inc. and Zone Telecom, Inc. (hereafter “ANPI” or “Company”) respectfully submit their comments on the Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) on February 4, 2013 in this proceeding.^{1/} ANPI generally supports but recommends several modifications to the reporting proposals in the NPRM. ANPI further submits that a regulatory scheme of detailed reporting requirements accompanied by the implied threat of selective FCC enforcement actions will not effectively resolve a rural call completion problem that results from bypass of regulated rate structures to achieve economic advantage without regard to service quality. ANPI also recognizes that the FCC has limited resources to attack this problem effectively. In these circumstances, the FCC should join forces with state regulatory commissions to mount a coordinated and concerted regulatory effort to attack this problem immediately and effectively.

¹ *In the Matter of Rural Call Completion*, WC Docket 13-39, released February 7, 2013 (FCC13-18), 78 Fed. Reg. 21981 (April 12, 2013).

ANPI provides carrier services to hundreds of telecommunications providers throughout the United States, including Tier 1, Tier 2 and Tier 3 carriers. The Company is the largest provider of long-distance telecommunications services to domestic independent telephone companies. ANPI has been in continuous operation since 1996. The Company's members and owners include over 125 telephone companies providing local exchange service in rural areas throughout the country. ANPI and its members annually carry billions of minutes of telecommunications. Accordingly, ANPI has considerable experience with rural telephone service and a particular interest in the NPRM's proposed "rules to help address problems in the completion of long-distance telephone calls to rural customers."^{2/}

DISCUSSION

A. An Effective Regulatory Policy to Address Rural Call Completion Problems is Long Past Due

ANPI fully concurs in the common theme expressed in each of the separate statements of the Commissioners issued with the NPRM. Each of these statements acknowledges serious problems with rural call completion service quality. The statements recognize that the problems are real and all too pervasive. In ANPI's view, these problems must be addressed immediately and effectively in order to preserve the integrity of universal public switched telephone network service.

Because of ANPI's vital interest in and experience with rural call completion problems, ANPI's Chief Executive Officer, Dave Lewis, attended, witnessed and participated in the Commission's inaugural workshop on such problems. That workshop was held on October 18, 2011. Mr. Lewis witnessed Commissioner Clyburn open that workshop by noting that at the

² NPRM ¶1.

urging of NTCA, NARUC and various individual state commissions, the FCC had initiated an investigation into problems in rural call completion. Mr. Lewis witnessed Commissioner Clyburn state that the importance of the matter could not be stressed enough. Mr. Lewis witnessed Commissioner Clyburn properly and pointedly highlight rural America's reliance on consistent call completion for public safety and the viability of businesses. No one challenged the fundamental proposition that consistent call completion is nothing less than vital to keeping rural and urban America connected.

From ANPI's perspective and experience, this initial workshop and webcast did not occur soon enough. Rather it was held at a time when rural call completion problems had already reached crisis proportions. Nonetheless, and despite the Commission's recognition, then and now, that adequate call completion service quality is required to protect the public safety and to sustain the economic lifeblood of rural communities, the problem rages on, even as we approach the second anniversary of that inaugural workshop.

From ANPI's perspective, the current state of affairs is not at all surprising. When Mr. Lewis participated in the FCC's inaugural workshop, he noted at the time that unless the FCC effectively addressed the underlying economic issues driving the problem, call completion failures in rural areas will not only persist, but also grow more chronic. The Commission has not in the meantime effectively addressed those underlying economic issues, and in particular the incentive to engage in termination rate arbitrage regardless of its effect on call completion service quality in rural areas. The Commission's current transition schedule for a new inter-carrier compensation system designed to remove this economic incentive will take eight years.^{3/}

^{3.} See *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Inter-carrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal*

ANPI emphatically does not suggest that the Commission lacks a sincere desire or commitment to address this critical issue. But the fact remains that almost two years have passed since the Commission decided to address this issue and the Commission has yet to propose an effective, immediate solution to the problem. The NPRM does not propose such a solution. As a result, ANPI's rural ILEC members have suffered, and will likely continue to suffer losses in credibility, revenue, and customers. Rural ILECs have had to expend countless staff hours responding to customer complaints about call completion problems and will likely continue to have to do so. Moreover, public safety, economic vitality, and the critically important connection between rural and urban America have suffered and will likely continue to suffer. Unless the FCC takes committed, timely and properly directed action to address the root economic cause of rural call completion problems, these losses will be long-standing, and produce potentially irrevocable harm to rural ILEC service and the customers and businesses who rely on that service for vital communications.

B. A Better Informed But Necessarily Selective FCC Enforcement Regime is a Positive Step, Yet Far From What is Necessary to Resolve the Problem

The NPRM is well-intentioned. It shows the Commission's desire to obtain more granular information on the rural call completion issue through the introduction of reporting requirements. The evidence obtained conceivably could support FCC enforcement actions against Intermediate Carriers for failure to provide adequate service to rural areas. ANPI supports several aspects of the reporting requirements proposed in the NPRM. With certain

Service Reform – Mobility Fund, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-32, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir, filed Dec. 8, 2011).

exceptions discussed below, ANPI would support and be prepared to comply with the approach proposed by the NPRM.

Nonetheless, ANPI has reason to question whether any enhanced FCC enforcement regime -- selective as it must be due to the large number of Intermediate Carriers and the limits of the FCC's resources -- will effectively deter all or even a significant number of such carriers from providing poor service to rural areas for the low rates they offer. On March 12, 2013, the Commission published a Consent Decree between the Enforcement Bureau and a major carrier that terminated its investigation into the carrier's call completion practices in rural areas.^{4/} Although the carrier did not admit any failure to comply with its obligation not to subject rural areas to any unreasonable prejudice or disadvantage in service quality, the carrier agreed to make a sizable "voluntary contribution" to settle the matter and to adopt a detailed compliance plan. If the theory of deterrence from selective enforcement is valid, it is logical to expect that the Commission's major enforcement action would have some significant effect by now on rural call completion service quality. So ANPI sent a short survey to the ILEC customers it serves on May 7, 2013. In the space of two days, ANPI received roughly 120 responses. Of those responding, 85% noted that rural call completion problems persisted, despite the FCC's major enforcement action memorialized in a published Consent Decree. A majority of the respondents, 51%, characterized their call completion problems as "serious" or "chronic."

As ANPI has already emphasized herein, the root cause of this problem is the ability of carriers to improve the economics of call termination to high cost rural areas by using low cost and often low quality means to deliver calls to rural areas. ANPI believes that these means are

^{4/} See *In the Matter of Level 3 Communications, LLC*, File No. EB-12-0087, Consent Decree (DA 13-371). ("Consent Decree")

widely available. The Consent Decree implies that the Commission has evidence that carriers are using these means to unreasonably disadvantage rural areas. Carriers have the economic incentive and ability to employ diverse technologies, directly or indirectly, to find the lowest cost means to deliver a call to a rural area without regard to quality of service standards for interconnection, signaling, and call hand-off. In ANPI's experience, these technologies often include open source platforms employing open IP ingress and egress routes with no quality of service standards. From ANPI's perspective, impaired service quality is simply treated as collateral damage in these schemes to bypass prevailing access charge structures in rural areas in favor of rates as much 20 percent less. In ANPI's view, this is the beginning and end of the issue – there is no middle.

C. The Commission Should Amend The Proposals in the NPRM

1. The Commission Should Adopt Minimum Standards and Exception Based Reporting

In the NPRM (para. 20), the Commission proposes to adopt reporting requirements for “facilities-based originating long-distance service providers.” This appears to be an amalgamation of the separately defined terms in proposed § 64.2101 (d) and (f), although proposed subsection (f) is a definition of “Long-distance voice service.” In any event, the term used in the NPRM (para. 20) is confusing, given the proposed definitions, and should be clarified. ANPI comments further on this issue in subsection 3 below. ANPI supports the 100 call attempt threshold for each rural OCN proposed in the NPRM (para. 20). An absolute threshold number is superior to a percentage threshold approach for purposes of these reporting requirements.

ANPI recommends an alternative approach to the format for the report specified in the NPRM (para. 20) based on acceptable thresholds of service quality. The NPRM's reporting

format appears designed to compare rural versus urban performance for call completion. While this format is consistent with the Commission's "unreasonable prejudice or disadvantage" legal theory relative to rural call completion, it needlessly requires collection and reporting of more data than would be required by the simple adoption of acceptable thresholds of performance for rural areas. The Commission already has ample evidence that there is a call completion problem in rural America. Collection of data to illustrate the magnitude of this problem relative to urban America does nothing to improve an already unacceptable quality of service to rural America.

The Commission can and should simply adopt a minimum acceptable call completion threshold. Reporting can and should then be limited to those OCNs for which the minimum threshold has not been achieved, or, on a more granular basis, those NPA/NXX's for which the threshold has not been achieved. This exception based reporting approach would require carriers to report less and provide the Commission with a smaller, relevant data base to manage, review and analyze. This approach would be less costly to carriers and allow the Commission to use its limited resources more effectively.

This is not a matter of small degree. A global minimum acceptable call termination threshold coupled with exception based reporting would dramatically cut down on the amount of data that would have to be captured, compiled, reported and stored by carriers and then managed, reviewed and analyzed by the Commission. The principal objective here is to insure that calls are flowing and being completed consistently and on an unencumbered basis throughout the public switched network. A single specific threshold with exception reporting will provide the Commission with all the data it needs to assure that objective is being achieved.

It would also allow enforcement actions against any company who knowingly failed to report a breach of the standard. High or increasing customer or carrier complaint levels in

geographic areas where no breach has been reported would signal likely failures to report. Should the Commission choose to focus only on performance in rural areas, ANPI would support more limited exception-based reporting, by OCN or NPA/NXX for rural areas only, based on call completion rates that fall below a specified minimum acceptable call completion ratio. In any event, the approaches suggested here by ANPI can achieve the benefits sought at less cost to carriers and the Commission.

2. The Record Retention Period is Unjustified

ANPI does not object to the fields or information prescribed for retention in the NPRM (para. 22). However, ANPI would object to the proposed six month retention period, if the Commission were to adopt the NPRM's extensive reporting requirements, contrary to ANPI's recommendations, and the Commission directed carriers to retain those data on a granular CDR level. Under those conditions, the amount of data that would have to be retained over the proposed six month retention period would be voluminous and could impose substantial costs on carriers. The NPRM provides no rationale for the proposed six month data retention period. If the Commission adopts the NPRM's extensive reporting requirements, it must either justify the need for a six month retention period, or reduce that period in light of the cost to carriers. ANPI would recommend a three month retention period under the stated conditions.

With respect to the questions posed in the NPRM (para. 23) about record keeping, ANPI generally collects and maintains all of the information specified in the NPRM and actively uses those data on a consistent basis to manage its terminations. ANPI does not support use of a "statistically valid sample of data." This would simply introduce another area of potential controversy. All calls should be captured, and reported on, in order to insure integrity in the process. From ANPI's perspective, reducing the proposed period of retention of data is the most useful cost reducing action the Commission could take in this area of the NPRM.

3. The Rules Should Apply to All Entities Offering Termination Services and Include Certification Requirements

The NPRM (para. 24) seeks comment on the entities that should be subject to reporting requirements. From ANPI's perspective, reporting requirements should apply to any entity that is offering its services in conjunction with the termination of calls on the public switched telephone network, including Intermediate Carriers, whether their regulatory designation is that of a Telecommunications provider, VOIP provider, PSTN provider, Wireless Provider, ESP or ITSP. Such obligations could be limited, however, to facilities-based providers that serve more than 50,000 access lines, as well as wholesale or intermediate providers who offer termination services to the carrier community, or complete calls or transport calls on behalf of another entity based on an interconnection with that entity. The 50,000 access line cut-off is a reasonable way to exclude carriers too small to make a difference, and too small to bear the costs of the reporting requirements.

The FCC's proposed reporting requirements should include companies operating under ESP, ITSP, VoIP or Wireless designation because, in ANPI's experience, such entities can and do go beyond the provision of services to their end use customers and offer other specific carriers, or the wholesale market in general, services which allow termination of calls to the PSTN. The Commission should not allow such designations to exempt reporting from such entities offering termination services that were not intended or envisioned by their original designations as ESP, ITSP, VoIP or wireless service provider. These entities are now a significant part of the market offering termination of traffic to the PSTN on a wholesale basis to the broad IXC market. Moreover, ANPI recommends that any reporting requirement adopted by the Commission include a requirement that each reporting entity terminating traffic for another carrier, or terminating traffic originated by an entity other than the end users it serves, certify that

it is terminating such traffic in compliance with all applicable intercarrier compensation orders and tariffs, and that it has on file similar certifications from companies to which it is directing traffic for the purpose of terminating traffic to the PSTN and to rural carriers in particular.

4. The Commission Should Not Adopt the NPRM's Proposed Safe Harbors

If the Commission adopts the modifications recommended by ANPI herein, the reporting requirements proposed would not be significantly burdensome. Accordingly, ANPI does not support the NPRM's "safe harbor" proposal (para. 33) for a provider that certifies on an annual basis "that it restricts by contract directly connected intermediate providers to no more than one additional intermediate provider in the call path before the call reaches the terminating provider." Such a certification provides no assurance that the contract is enforceable, or that there is any incentive to enforce the contract. Until such time as the rural call completion problem has been satisfactorily resolved, and there is strong and categorical evidence that it has been eliminated with a sufficient passage of time to confirm that result, ANPI does not favor the "safe harbor" as proposed in the NPRM. ANPI stands ready to comply with the FCC reporting requirements even in instances where there are no intermediate carriers, i.e., when ANPI is terminating traffic directly to a terminating carrier.

ANPI also opposes the second "safe harbor" proposed in the NPRM (paras. 35, 36). This "safe harbor" is based on a comparison of rural and non-rural call completion percentages. It is prone to errors in calculation and could be easily circumvented. It is also inconsistent with the minimum acceptable service standard for rural areas that ANPI favors, and which does not depend on a comparison of rural and urban call completion rates.

D. The Commission Should Join Forces with State Regulatory Commissions to Mount a Coordinated and Concerted Regulatory Effort to Attack the Rural Call Completion Problem Immediately and Effectively

As ANPI has already shown herein, imposition of reporting requirements will not result in an expeditious or efficient elimination of the rural call completion problem. In short, reporting is effective only if it can quickly identify and isolate the problem with the clarity necessary to invoke strong, consistent, and timely action in all cases. The remedy is not well suited to a rural call completion problem which, in ANPI's experience, continues to be nomadic. In a given rural area, the problem appears, disappears and reappears again over a period of several months. It also migrates from one geographic area to another and back again over longer periods. Against the backdrop of this fluid situation, enforcement actions become difficult, highly selective and, in consequence, inconsistent. More committed and effective action is required.

The Commission has decided to transition to a new bill and keep intercarrier compensation system over an eight year period. From ANPI's perspective, however, the objective of that decision, and the Commission's careful balancing of interests in arriving at that decision, are being systematically undermined because the prevailing intercarrier compensation structures are broadly disregarded. ANPI has regularly attended industry events at which IXC's promote their wholesale carrier services and wholesale rate decks. In ANPI's experience, once multiple rate decks are combined to a unified whole in a least cost routing ("LCR") framework, the majority of terminations available for purchase are priced below the associated access rates of the NPA/NXX's for which rates are extended. When computers are making real time buying decisions based on the rates offered for such NPA/NXX's, service quality almost necessarily becomes a reactive proposition even for the most responsible IXC.

ANPI also has anecdotal evidence of bypass schemes that give rise to the issues discussed herein. Two weeks ago, ANPI participated in a conference call with one of its customers in an effort to assist the customer with the effects of a significant rise in traffic volumes transiting over the local trunks provisioned between the customer's end offices and its local transiting tandem. ANPI found probative evidence that long-distance calls were being directed down those local trunks as part of an arbitrage/bypass scheme.

ANPI does not suggest that all IXCs are engaging in such schemes. ANPI knows that there are significant portions of the IXC community, including ANPI, who are doing their best to both optimize the economics of their business and terminate traffic with a high quality of service. ANPI knows there are carriers like ANPI who spend significant time and resources to assure quality terminations while at the same time keeping traffic on their networks in a viciously competitive marketplace. In ANPI's view, however, the market for terminations as a whole has become extremely dysfunctional. Regardless of their effect on service quality, the market offers lower cost solutions to carriers attempting to address compressing margins and rigorous, highly competitive market conditions.

In these circumstances, a concerted regulatory response is necessary now from both the FCC and state commissions interested in resolving this problem effectively, efficiently and immediately. The FCC's resources are limited and far removed from this problem. State commissions are closer to the problem and have additional resources to bring to bear. Separate regulatory efforts by the FCC and individual state commissions to attack this problem based on economically obsolete distinctions between interstate and intrastate communications are inefficient and, from ANPI's perspective, ineffective.

ANPI recommends that the Commission embrace the concept of a coordinated FCC/State commission regulatory approach to this problem in its decision in this docket. The FCC should acknowledge the limits of what it is capable of doing to resolve this problem and advise state commissions on what they can do to fill the voids. The FCC should further specify what regulatory authority it is prepared to delegate to state commissions -- including regulatory authority the FCC has declined to exercise -- in order to ensure acceptable service quality for terminations in rural areas. If the Commission is unable to agree on such guidance in this docket, the FCC should immediately convene a discretionary Federal-State Joint Board and direct it to develop and report recommendations within 90 days for a joint Federal/State regulatory effort to resolve the rural call completion problem expeditiously.

As to specific areas of Federal/State cooperation that the FCC should consider, ANPI provides the following outline of a possible approach for the Commission's consideration. First, the FCC would permit each state to require certification of every IXC offering termination services for that state to another IXC, including wireline, wireless, VOIP and ESP entities offering termination services. Second, each IXC handing off traffic to a subsequent carrier to terminate calls on its behalf would be required to secure verification from that carrier that: (a) it possesses a certificate from the state in which the call would be terminated; (b) it complies with all applicable FCC and state regulations and tariffs; and (c) it does not terminate wireline initiated interexchange traffic, or interMTA wireless traffic, through local DIDs, local EAS trunks, local interconnection agreements, or any other access bypass mechanism. Third, the FCC would authorize each state: (a) to require each carrier applying for a certificate to agree to comply with all state and federal standards or prevailing intercarrier compensation rates for interexchange traffic; and (b) to revoke the certificate for repeated non-compliance. At a

minimum, the FCC should adopt the certification requirements recommended by ANPI in section C. 3 (page 10) of these comments.

CONCLUSION

For the reasons stated herein, the Commission should adopt ANPI's recommended changes to the NPRM's proposed rules in this proceeding and initiate a concerted effort with state regulatory commissions to attack the rural call completion problem efficiently, effectively and immediately.

Respectfully submitted,

A handwritten signature in blue ink, reading "Charles A. Zielinski". The signature is written in a cursive style with a horizontal line underneath the name.

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May 13, 2013